

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:MCT:NEW:1:POSTF-167138-01
REBuchbinder

date: JAN 04 2002

to: [REDACTED], Team Coordinator (LMSB)

from: Associate Area Counsel (LMSB)

subject: [REDACTED] ([REDACTED]) Form 870

On December 20, 2001 we advised you concerning the correct name to be used on Form 870. We also sent the advice for post-review by our National Office. Chief Counsel Field Service agrees with our conclusion that "[REDACTED]" and [REDACTED] ("[REDACTED]"), EIN [REDACTED], (the old common parent) should execute the Form 870. However, there are a few additional comments to be made.

Field Service suggests that [REDACTED] be placed in the block at the top of the Form 870 captioned "Taxpayers"; that it be signed by a current officer of [REDACTED]; and, that the title of such officer and the company for which he/she is signing be placed beneath his/her signature. We believe that this is consistent with the manner in which you indicated the form was being completed.

Also, Field Service would eliminate the reference to Prop. Reg. Section 1.1502-77(f) in our advice because it is not currently effective, and will not be effective until it becomes final. Consequently, consider such reference eliminated.

Finally, there is one other change to our prior memorandum. In the fourth paragraph on page 2, we stated that under the circumstances (i.e. acquisition by another group with the old common parent remaining in existence) only the old common parent may execute the waiver for prior years. While this is generally true, if the acquisition constituted a "reverse acquisition" under Treas. Reg 1.1502-75(d)(3)(i), then both the new common parent and the old common parent would have authority to execute the waiver. See Union Oil Co. v. Commissioner, 101 T.C. 130, 140 (1993). It is not altogether clear from the facts presented or from the private letter ruling (Letter Ruling 2001 14002, April 26, 2000; CC:DOM:CORP:4-PLR-118229-99) whether this is a reverse acquisition. To be a reverse acquisition, the policyholders of [REDACTED] (immediately before the reorganization) would have to own more than [REDACTED]% of the stock of [REDACTED] (immediately after the reorganization).

Since we are not sure if Treas. Reg. 1.1502-75(d)(3)(i) applies to this transaction, you should obtain the waiver only from [REDACTED] as [REDACTED] is a proper party to execute a consent regardless of whether this is or is not a reverse acquisition.

This writing may contain privileged information. Any unauthorized disclosure of this writing may have an adverse effect on privileges, such as the attorney client privilege. If disclosure becomes necessary, please contact this office for our views.

If there are any questions please contact Associate Area Counsel William F. Halley at (973) 645-3348.

JOSEPH F. MASELLI
Area Counsel
(Large and Mid-Size Business)

By: _____
WILLIAM F. HALLEY
Associate Area Counsel
(Large and Mid-Size Business)

No Attachments

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to: [REDACTED], Team Coordinator (LMSB)

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subject: [REDACTED] ([REDACTED]) Form 870

We have been asked for advice concerning the correct name to be used on Form 870 under the following scenario. Although the statute does not expire until February [REDACTED], you have requested a quick answer in order to close this case before [REDACTED].

You provided us with copies of: two Forms 872 for the examination year ([REDACTED]); extracts from the [REDACTED] and [REDACTED] Forms 1120-L; several extracts from the Plan of Reorganization sent to the policyholders of [REDACTED] contracts; a copy of the proposed Form 870 using the title "[REDACTED]", formerly known as The [REDACTED]; and an extract from a private letter ruling secured by the taxpayer.

The [REDACTED] ("[REDACTED]"), EIN: [REDACTED], was a [REDACTED] company for the year ([REDACTED]) under examination and was the ultimate parent of various subsidiary insurance corporations during this period, filing a consolidated Form 1120-L income tax return. Several changes are about to occur or have occurred that are described as "de-stacking". As of [REDACTED], a plan was put into effect to "demutualize" [REDACTED]. Although there was no set date, it is to be completed by [REDACTED]. To that end, On [REDACTED], stock was offered in a new corporation as an IPO known as [REDACTED] ("[REDACTED]"), EIN [REDACTED]. [REDACTED] will be the new "ultimate parent company" It will own another new company, [REDACTED] ("[REDACTED]") which, in turn, will own [REDACTED]. [REDACTED]'s life insurance companies remain subsidiaries under [REDACTED]. However, other companies, e.g. asset management and property & casualty, will no longer be subsidiaries of [REDACTED] but will be subsidiaries under [REDACTED] via other holding companies. We reference the diagram in the documents provided by Agent [REDACTED].

Although one of the provided documents states that [REDACTED]'s name will be changed to [REDACTED] ("[REDACTED]") when it changes from a [REDACTED] company to a stock company, you have clarified that there will be no actual change of name. What will occur is

that [REDACTED] will be "referred to" as [REDACTED] to avoid confusion with the old set-up, but that the legal name will remain unchanged. According to the information you provided, [REDACTED]'s EIN of [REDACTED] will also remain unchanged. There was some question concerning the change of operation of [REDACTED] from a [REDACTED] company to a stock company. However, we have consulted informally with Gerald Fleming in the National Office who indicated that for purposes of agency for subsidiaries there would be no difference in the entity. The private letter ruling secured by the taxpayer (PLR-118229-99) confirms the continued existence of the company ([REDACTED]) which was the common parent of the affiliated group, and that the election to file a life-nonlife consolidated return remains in effect.

Although [REDACTED] (now also known as [REDACTED]) will no longer file a consolidated tax return, it will remain the common parent for the consolidated group for the years before the "de-stacking".

Reg. Section 1.1502-77 basically provides that the common parent for most purposes "...shall be the sole agent for each subsidiary in the group, duly authorized to act in its own name in all matters relating to the tax liability for the consolidated return year." This applies "... whether or not a consolidated return is made for any subsequent year, and whether or not one or more subsidiaries have become or have ceased to be members of the group at any time." Id.

The acquisition of a common parent by another group subsequent to the years in issue does not affect the status of the original parent as to the years in issue, so long as the original parent remains in existence. Under these circumstances, only the original parent may execute a waiver for the years in issue. See Prop. Regs. Section 1.1502-77(f), Example 2 (9/26/2000).

Under the circumstances described, this office recommends using as the title, the current and unchanged name of "[REDACTED]" the unchanged EIN of [REDACTED].

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